station affiliated with the same network." 17 U.S.C. § 119(a)(5)(B)(ii). The specification of the necessary remedy supports the conclusion that a district court must enter this injunction upon finding a satellite carrier to have engaged in a pattern or practice violation.

PrimeTime argues that notwithstanding SHVA's use of the mandatory term "shall," the court retains equitable discretion as to the scope of the proper remedy. In support of this argument, PrimeTime relies heavily on Hecht Co. v. Bowles, 321 U.S. 321 (1944). The Supreme Court in Hecht recognized the long history of the equity courts' power to craft each decree to fit the particulars of each case. In light of this long history and tradition, a congressional intent to eliminate equitable discretion must be clear and unequivocal. Id. at 329-30.

The statute at issue here is distinguishable from the Emergency Price Control Act ("EPCA") construed by the Supreme Court in Hecht. The EPCA provided that upon a showing that the defendant had engaged or was about to engage in acts or practices that violate the Act, "'a permanent or temporary injunction, restraining order, or other order shall be granted without bond.'" Id. at 322. The question presented to the Supreme Court was whether the government was entitled as of right to an injunction or whether the court had some discretion to grant or

withhold such relief. The Court held that the statute did not remove judicial discretion. In so ruling, the Court relied upon three factors. First, the plain text of the EPCA left room for the exercise of discretion insofar as it required the court to grant "'a permanent or temporary injunction, restraining order, or other order.'" Id. at 328 (emphasis added). After providing an example of an "other order" consistent with the purpose of the statute, the Court concluded that a court clearly had the power to choose whether the injunctive relief or the "other order" would be more appropriate to address the evil at hand. Id. Second, the legislative history was ambiguous as to whether or not courts had discretion to decline injunctive relief. Although some selections from the Senate Report suggested courts lacked discretion, another selection stated that courts were given jurisdiction "'to issue whatever orders to enforce compliance is proper in the circumstances of each particular case.'" Id. at 329 (quoting S. Rep. No. 931, 77th Cong., 2d Sess., p. 10). The ambiguity of the text and in the legislative history required the Court to turn to the long history of judicial discretion in equity jurisprudence.

> We are dealing here with the requirements of equity practice with a background of several hundred years of history. Only the other day we stated that 'An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion

> which guides the determinations of courts of equity.' The historic injunctive process was designed to deter, not to punish. The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied.

Id. at 329-30 (citation omitted). The Court also noted that the EPCA governed procedure in state courts as well as federal courts because the former had concurrent jurisdiction with the latter in civil enforcement proceedings. In light of the historical preference for discretion and a perceived federalism problem arising from congressional limitations on the equity jurisdiction of state courts, the Court concluded that "if Congress [had] desired to make such an abrupt departure from traditional equity practice[,] . . . it would have made its desire plain." Id. at 330.

Unlike the situation in Hecht, Congress here has made it quite plain that federal district courts lack discretion in fashioning equitable relief. The best indication of legislative intent is the plain text of the statute itself. As mentioned supra, the mandatory meaning of "shall" is made plain by contrast with congressional use of permissive language to provide the

possibility of injunctive relief for individual violations that do not amount to a pattern or practice. The fact that SHVA delineates in specific terms the scope of the injunction a district court must issue unambiguously shows a legislative intent to abrogate equitable discretion. Unlike the case in Hecht, the legislative history here reflects no contrary intent. See H.R. Rep. No. 100-887(I), at 18 (1988) ("If the satellite carrier engages in a willful or repeated pattern or practice of violations, the court shall issue a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmission of any network station affiliated with the same network. The injunction would be applicable within the geographical area within which the violation took place--whether local, regional, or national."); H.R. Rep. No. 100-887(II), at 21 (1988) (same). Finally, this suit is one for copyright infringement arising under the federal Copyright Act. Subject matter jurisdiction therefore lies exclusively in federal court. See 28 U.S.C. § 1338(a). Any federalism concern perceived by the Court in Hecht is thus not present in this case.[7]

---

[7]PrimeTime also cites Board of Governors of Fed. Reserve Sys. v. DLG Fin. Corp., 29 F.3d 993 (5th Cir. 1994), Director, OTS v. Lopez, 960 F.2d 958 (11th Cir. 1992), and S.E.C. v. Unifund SAL, 910 F.2d 1028 (2d Cir. 1990), each of which relied upon Hecht to find that seemingly mandatory statutes did not abrogate equitable discretion. PrimeTime's reliance upon these (continued...)

Congressional intent to abrogate equitable discretion with respect to the remedy for a pattern or practice violation of SHVA is plain and unambiguous. There is no reason to require anything more from Congress, such as an unambiguously clear statement in the text of the statute, in order for the court to act upon this intent. Clear statement rules requiring the use of "magic words" in the text of a statute make sense only when Congress regulates in an area in which constitutional values are protected by the political process rather than by judicial review. See, e.g., Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 552 (1985) (in the context of generally applicable federal laws regulating both states and private persons, state sovereign interests are protected by "procedural safeguards inherent in the structure of the federal system" rather than by "judicially created limitations on federal power") and Gregory v. Ashcroft, 501 U.S. 452, 460 (1991) (stating that if Congress intends to alter the traditional balance between the states and the federal government, "it must make its intention to do so unmistakably

---

[7](...continued)
cases is misplaced. Like Hecht, they are distinguishable because the statutes at issue did not specify the particular injunction that the court must issue. The specification of a particular injunctive remedy constitutes an unequivocal statement of intent to eliminate equitable discretion.

clear in the language of the statute") (internal quotation marks omitted).

No such constitutional values are at stake here. The Constitution commits to Congress the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. art. I, § 8, cl. 8. In the exercise of that authority, Congress passed the Copyright Act of which SHVA is a part. If Congress can create the right, it follows that it can also create the remedy. Furthermore, Article III affords Congress the power to restrict the equity jurisdiction of the lower federal courts. See Lauf v. E. G. Shinner & Co., 303 U.S. 323, 330 (1938) (upholding the Norris-LaGuardia Act's prohibition on federal court jurisdiction to issue an injunction in any case growing out of a labor dispute); cf. Glidden Co. v. Zdanok, 370 U.S. 530, 557 (1962) (plurality opinion) (stating that separation of powers principles do not prohibit Congress from limiting the federal courts remedial powers to damages rather than injunctive relief).

The plain meaning of Section 119(a)(5)(B)(ii) is that upon finding a pattern or practice violation, a district court must issue the specified permanent injunction. Congress has clearly abrogated the district courts' equitable discretion to fashion a

remedy for a satellite carrier's pattern or practice violation. Accordingly, the equitable defenses that PrimeTime raises are of no consequence.

B. Scope of the Injunction

Congress has specified that if a satellite carrier's pattern or practice violation has been carried out on a local or regional basis, the court must issue a permanent injunction barring the defendant from the secondary transmission, for private home viewing in that locality or region, of the primary transmissions of any primary network station affiliated with the same network. See 17 U.S.C. § 119(a)(5)(B)(ii). It is clear that, for the purposes of this lawsuit, the relevant geographic area is WTVD's predicted Grade B contour. The legislative history to SHVA's 1994 amendments clearly endorses the predicted Grade B contour as the measure of the relevant geographic area. See H.R. Rep. No. 103-703, at 15 (1994) ("[F]or purposes of establishing a pattern or practice violation carried out on a local basis under § 119(a)(5)(B), the only relevant area is the network station's predicted Grade B contour."); id. ("The only appropriate area [for a pattern or practice violation within a locality] is the predicted Grade B contour of the network station at issue."). Furthermore, the parties' evidence and argument treated WTVD's

predicted Grade B contour as the relevant geographic area. See Pl.'s Mem. of Law in Supp. of Pl.'s Mot. for Summ. J. at 1; Def.'s Mem. in Opp'n to Pl.'s Mot. for Summ. J. at 4, 7 n.6, 13, and 17; Def.'s Trial Br. at 3 n.4, 10, 16 n.7, and 23 n.27; Def.'s Proposed Findings of Fact and Conclusions of Law at 8, 9, 18 n.6, and 25 & n.16. The geographic scope of the court's injunction will therefore cover the area within WTVD's predicted Grade B contour.

The court will therefore follow Section 119(a)(5)(B)(ii) and enjoin PrimeTime from the secondary transmission, for private home viewing within WTVD's predicted Grade B contour, of the primary transmissions of any primary network station affiliated with ABC. Pursuant to Fed. R. Civ. P. 65(d), this injunction will bind not only PrimeTime, but also its officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with PrimeTime who receive actual notice of the order. ABC's request for injunctions requiring PrimeTime to comply with SHVA in transmitting broadcast programming to subscribers in this local market and to provide the required subscriber information are made unnecessary by the court's order prohibiting PrimeTime from transmitting such programming. These requests for injunctive relief are therefore moot.

CONCLUSION

For the foregoing reasons and those stated in this court's memorandum opinion of July 16, 1998, the court finds that there is no genuine dispute of material fact and that ABC is entitled to (1) judgment as a matter of law, and (2) a permanent injunction barring PrimeTime from transmitting ABC network programming within WTVD's local market.

An order and judgment will be entered contemporaneously herewith.

United States District Judge

August 19, 1998

EXHIBIT C

CBS, INC. V. PRIMETIME 24
ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 96-3650-CIV-NESBITT

CBS INC.; FOX BROADCASTING CO.; CBS TELEVISION AFFILIATES ASSOCIATION; POST-NEWSWEEK STATIONS FLORIDA, INC.; KPAX COMMUNICATIONS, INC.; LWWI BROADCASTING, INC.; AND RETLAW ENTERPRISES, INC.,

Plaintiffs,

vs.

PRIMETIME 24 JOINT VENTURE,

Defendant.

ORDER AFFIRMING IN PART AND REVERSING IN PART MAGISTRATE JUDGE JOHNSON'S REPORT AND RECOMMENDATION

This cause comes before the Court upon Magistrate Judge Linnea R. Johnson's Report and Recommendation ("Report" or "R&R"), entered July 2, 1997 (D.E. #148), regarding Plaintiffs'[1] Motion for Preliminary Injunction, filed March 11, 1997 (D.E. #45). PrimeTime 24 Joint Venture's ("PrimeTime 24") objections to the Report and Recommendation were timely filed on August 1, 1997 (D.E. #156). Therefore, pursuant to 28 U.S.C. § 636 the Court must review the Report de novo.

[1] CBS Inc., Fox Broadcasting Co., CBS Television Affiliates Association, Post-Newsweek Stations Florida, Inc., KPAX Communications, Inc., LWWI Broadcasting, Inc., and RETLAW Enterprises, Inc. (collectively "Plaintiffs")

After due consideration of the Report, PrimeTime 24's Objections, Plaintiffs' Response, and the entire record, the Court **AFFIRMS** in part and **REVERSES** in part the Report for the following reasons.

INTRODUCTION

This is a copyright infringement action. Plaintiffs own exclusive rights in copyrighted network television programs that are retransmitted by PrimeTime 24 via satellite to its subscribers nationwide. The principal issue is whether PrimeTime 24's actions are permitted by the Satellite Home Viewers Act ("SHVA"), 17 U.S.C. § 119, which provides a limited statutory license to satellite carriers.[2] The license in the SHVA permits PrimeTime 24 to transmit network programming only to "unserved households".

An "unserved household" is defined in 17 U.S.C. § 119(d)(10) as

> a household that -
>
> (a) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the

[2] In addition, PrimeTime 24 has a contractual license from FoxNet, Inc., a subsidiary of Plaintiff Fox Broadcasting Company. The contractual license reiterates the standard provided in 17 U.S.C. § 119.

Federal Communications Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network."

17 U.S.C. § 119(d)(10) (emphasis added). The principal dispute between the parties is over the meaning of the phrase "over-the-air signal of grade B intensity (as defined by the [FCC])" in Section 119(d)(10)(A). Plaintiffs contend that this means a signal of the intensity defined by the FCC as "grade B,"[3] and that it is an objective standard. PrimeTime 24 contends that the statute permits it to rely on subjective statements by subscribers about "acceptable" picture quality in determining whether to provide network programming to its subscribers.

[3] "Grade B intensity" is defined by the FCC in terms of signal strength: 47 dBu for television channels 2-6, 56 dBu fr television channels 7-13, and 64 dBu for television channels 14-69. 47 C.F.R. §73.683(a) (1996). "Grade A" refers to a stronger signal (i.e. with higher dBu levels), usually found closer to a transmission tower.

BACKGROUND[1]

A. The Plaintiffs

Plaintiffs CBS, Inc. ("CBS"), and Fox Broadcasting Co. ("Fox") are two separate national television broadcast networks. The remaining Plaintiffs consist of several individual CBS network stations and a trade association of CBS affiliate stations. CBS and Fox own exclusive rights in copyrighted network television programs such as "60 Minutes" and "The Simpsons". They broadcast their network programs nationwide through a network of local television stations that, in turn, transmits the network's programming to viewers in their local markets. These local television stations - affiliates - are licensed to broadcast network programs to their local markets.

The partnership between national broadcast networks and their affiliates enables local network stations to offer the viewing public a mix of 1) national programming provided centrally by the networks, 2) local programming, such as news, weather, and public affairs, produced in-house by many local stations, and 3) syndicated programming acquired by local stations from third parties. For example, the local CBS

---

[1] This section is drawn from Magistrate Judge Johnson's Report, and the transcript of the preliminary injunction hearing.

affiliate provides its viewers with CBS's nationwide network programming, local news and weather, as well as programs from third parties (syndicated programming). This programming is available to the public for free, as long as they can receive the local broadcast signal.

As well as relying upon each other to provide programming to households nationwide, networks and affiliates rely upon each other financially. Both network stations and local affiliates derive a majority of their revenue from advertising (commercials). The price of such advertising is dependent on the type and size of a program's audience. The advertising dollars are split such that the network receives the advertising dollars during network commercials, and the local affiliate receives the advertising dollars during local commercials. Although local stations sell time on their programming, a majority of a station's revenues are derived from advertising on network programs. See R&R at 6.

Networks and affiliates both promote the programming of the other so as to increase a program's audience. For example, during a network program, there are often advertisements for a local program that will air adjacent to the network program. Given that advertising dollars increase when viewership

increases, maximizing viewership for both network and local stations is of great importance to maintaining the network/affiliate relationship.

B. The Exception For Satellite Delivery to "Unserved Households"

CBS and Fox are generally entitled to control how and when their programming is made available to the public. In 1988, however, Congress crafted the "compulsory license" exception for satellite carriers. This exception, codified in 17 U.S.C. § 119, allows satellite carriers to deliver network stations to satellite dish owners without the network's permission. The exception, however, is limited to "unserved households". See 17 U.S.C. § 119(1); supra, at 2-3.

One of the reasons for the exception was to provide network service to households that could not receive broadcast signals over the air. See H.R. Rep. No. 100-887, part 1, at 14 (1988); see, e.g., 134 Cong Rec. H9660-01, 1988 WL 17005 (Cong. Rec.) (Oct. 5, 1988) ("The goal of the bill . . . is to place rural households on a more or less equal footing with their urban counterparts.") (remarks of Rep. Kastenmeier).

C. PrimeTime 24

It is not disputed that Defendant PrimeTime 24 is a "satellite carrier" as defined in 17 U.S.C. § 119(d). PrimeTime 24 transmits network programming (including CBS and Fox programming) to satellite dish owners ("subscribers") nationwide. PrimeTime 24 does not retransmit the signals of each local affiliate to its subscribers in that area, but rather offers the same network signals for sale to its subscribers.[5] Specifically, PrimeTime 24 has a contractual arrangement with a CBS affiliate and a Fox affiliate and broadcasts the programming from those affiliates to all of its subscribers. PrimeTime 24's broadcast substitutes the affiliates' local advertising with national advertising. See R&R at n.6.

PrimeTime 24 sells its service through distributors, such as DirecTV, or directly to owners of certain satellite dishes. PrimeTime 24 offers two network programming packages, PrimeTime East and PrimeTime West, as well as FoxNet, which offers Fox network programs. PrimeTime East is a package of ABC, CBS, and NBC programming from network stations located on the East Coast.

---

[5] PrimeTime 24's service differs from cable which is required to carry local stations. See Turner Broadcasting Sys. v. FCC, 117 S. Ct 1174 (1997).

PrimeTime West is a package of ABC, CBS, and NBC programming from network stations located on the West Coast. Subscribers can receive PrimeTime East, PrimeTime West and FoxNet together.

One of the advantages to PrimeTime 24's services is that viewers can watch network programs several hours later (or earlier) by watching a station from a distant time zone, and can see sports events (such as NFL football) that are not available locally.

PrimeTime 24 does not have a license from CBS to retransmit its programming. PrimeTime 24 has obtained a contractual license from Fox through an agreement with a Fox subsidiary, FoxNet, but that license extends only to "unserved households."

PrimeTime 24 attempts to comply with the SHVA by limiting its services to "unserved households." PrimeTime 24's contracts with its distributors require that the distributor sell satellite services only to eligible households under 17 U.S.C. § 119. To help determine whether a potential subscriber qualifies as an "unserved household," distributors are required to ask three questions: 1) whether they intend to use the programming for residential use; 2) whether they have subscribed to cable in the last 90 days; and 3) whether the household receives an acceptable picture over the air.

PrimeTime 24 will typically supply services to persons who state that: 1) they intend to use the programming for residential use, 2) have not subscribed to cable in the last 90 days, and 3) do not receive an acceptable picture over the air. PrimeTime 24 does not independently verify the strength of the network signals received by its subscribers. Neither does PrimeTime 24 check the location of potential subscribers to determine if they are likely to be able to receive a signal of grade B intensity.

D. The Dispute

Plaintiffs contend that PrimeTime 24's efforts to limit sales to "unserved households" are woefully insufficient. First, Plaintiffs argue that PrimeTime 24 has placed too much emphasis on individual subscribers' perception of the picture quality they receive over the air, and that such emphasis is questionable considering that many people seek PrimeTime 24's services for reasons unrelated to the fact that they cannot receive free network programming over the air.[6] Second, Plaintiffs argue that

[6] Such reasons include: 1) access to additional network stations, 2) ability to watch network programs several hours earlier or later by watching stations from a distant time zone, 3) access to sports programs that are unavailable locally, and 4) obtaining network programming without installing or maintaining an antenna. See R&R at 10.

PrimeTime 24 will sell its services to any household without checking its location to confirm that it is unlikely to receive a signal of "grade B" intensity.[7] As a result, PrimeTime 24 provides its services to hundreds of thousands of individuals who do not fall within Congress' definition of an "unserved household."

According to Plaintiffs, PrimeTime 24's actions have upset the network/affiliate relationship because individuals who subscribe to PrimeTime 24's service do not watch local network programs provided by the affiliates. This is due to the fact that PrimeTime 24 does not transmit local affiliate programming or advertising. Instead, as mentioned previously, PrimeTime 24 transmits the network programs broadcast by the handful of affiliates with which it has a contractual agreement, and substitutes local advertising with national advertising. Accordingly, Plaintiffs contend that PrimeTime 24's violation of the SHVA is reducing the number of viewers for local affiliate programming and advertising, which in turn reduces an affiliate's revenue stream.

---

[7] As referred to in 17 U.S.C. § 119, supra at 2-3.

After four days of oral argument on Plaintiffs' Motion for Preliminary Injunction, the Magistrate Judge entered a Report granting the request for injunctive relief. The Report stated that Plaintiffs had met their burden of establishing that PrimeTime 24's efforts to comply with the SHVA were insufficient and constituted a willful or repeated violation of the act.

PrimeTime 24 has filed lengthy objections to the Report. Three main issues emerge from the objections: 1) whether picture quality should be considered when determining whether a household falls within the definition of "unserved households;" 2) whether Plaintiffs met their burden of demonstrating that PrimeTime 24 is providing service to ineligible households and that such violations were willful or repeated; and 3) whether PrimeTime 24 sufficiently rebutted Plaintiffs' evidence.

In addition to those primary issues, PrimeTime 24 contends that injunctive relief should not be granted because Plaintiffs have not suffered irreparable harm, the balance of harms do not favor an injunction, the public interest will not be served by an injunction, and the proposed injunction would not be manageable.

DISCUSSION

In order to grant a preliminary injunction, a district court need not find that the evidence guarantees a verdict in favor of the plaintiff. Rather, it must determine that the evidence establishes: "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction were not granted; (3) that the threatened injury to the plaintiffs outweighs the harm an injunction may cause the defendant; and (4) that granting the injunction would not disserve the public interest." Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995) (citing Church v. City of Huntsville, 30 F.3d 1332, 1341-42 (11th Cir. 1994)).

A. Substantial Likelihood of Success

1. "Unserved Households"

a. PrimeTime 24's Interpretation

PrimeTime 24 maintains that the Magistrate Judge erred in finding that Plaintiffs established a likelihood of success in proving that PrimeTime 24 violated the SHVA. The Magistrate's first error, according to PrimeTime 24, involved the definition of "unserved households." PrimeTime 24 argues that the intent of the SHVA is to provide clear reception of network signals to households

that cannot now receive them ("unserved households"). Thus, whether a household receives a clear picture is of great significance to determining whether that household is "unserved" un the statute. See Obj. at 20. PrimeTime 24 contends that the Magistrate incorrectly ignored the importance of picture quality and therefore failed to consider that PrimeTime 24's policy of providing services to individuals who state that they cannot receive an acceptable picture over the air conforms with the SHVA.

b. Statutory Interpretation

The SHVA defines an "unserved household" as "a household that (A) cannot receive, through the use of conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network." 17 U.S.C. Section 119(d)(10) (emphasis added). Despite PrimeTime 24's contention that clear reception of network signals is of significance, the statute does not discuss clear reception. Rather, the plain language of the statute adopts the FCC's definition of a grade B signal (an objective test) to determine whether a household is an "unserved household."

A basic tenet of statutory construction is that a court should give the statutory language its ordinary and plain meaning. See Caminetti v. United States, 242 U.S. 470, 485 (1917); United States v. Scrimgeour, 636 F.2d 1019, 1022 (5th Cir. 1981). The Magistrate Judge correctly gave the statute its plain meaning and found that Congress established an objective test to determine which households a satellite carrier could rebroadcast network programs.

In addition, the Magistrate concluded that even if the court considered legislative history, the result would be the same. The Report noted that Congress rejected a bill proposed by PrimeTime 24 and other satellite carriers that would have permitted viewers to receive network services by satellite if they submitted affidavits indicating that they did not receive adequate service over the air. See R&R at n.16. Although Congress rejected this bill, PrimeTime 24 continues to argue to this Court that Congress meant to adopt such a standard. However, as noted by the Report, "[w]hen Congress has expressly considered and rejected a proposal to include particular provisions in a statute, 'there could hardly be [a] clearer indication' that a law does not have the meaning it would have had if the proposal had been accepted." R&R at 29-30 (citing Tanner v. United States, 483 U.S. 107, 125 (1987).

c. Grade B Intensity

The Report also determined that the FCC defined "a signal of grade B intensity" in 47 C.F.R. § 73.683(a).[8] PrimeTime 24 disputes this and argues that the FCC never precisely defined a grade B signal; rather, the FCC's guidelines as stated in 47 C.F.R. §73.683 only set forth median field strengths and contours, and have nothing to do with whether a household can receive a signal of grade B intensity through a conventional rooftop antenna. See Obj. at 21.

---

[8] Section 73.683 provides:

(a) In the authorization of TV stations, two field strength contours are considered. These are specified as Grade A and Grade B and indicate the approximate extent of coverage over average terrain in the absence of interference from other television stations. Under actual conditions, the true coverage may vary greatly from these estimates because the terrain over any specific path is expected to be different from the average terrain on which the field strength charts were based. The required field strength, F (50,50), in dB above one micro-volt per meter (dBu) for the Grade A and Grade B contours are as follows:

	GRADE A(dBu)	Grade B(dBu)
Channels 2-6	68	47
Channels 7-13	71	56
Channels 14-69	74	64

(b). . . the curves should be used with appreciation of their limitations in estimating levels of field strength. Further, the actual extent of service will usually be less than indicate by these estimates due to interference from other stations. Because of these factors, the predicted field strength contours give no assurance of service to any specific percentage of receiver locations within the distances indicated. In licensing proceedings these variations will not be considered.